

GAHC010009932014



2024:GAU-AS:10875

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./355/2014

LALIT BORAH
S/O LT. SONA RAM BORA R/O MAZGAON KHORA ATI P.O. and P.S. TEZPUR
DIST. SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PUBLIC PROSECUTOR, ASSAM.

2:SMTI. RAJU BORA
W/O KUNJA BORA R/O KUNDARABARI P.O. and P.S. TEZPUR
DIST. SONITPUR
ASSAM.

3:SRI KUNJA BORA
S/OLT. INDRESWAR BORA R/O KUNDARABARI P.O. and P.S. TEZPUR DIST.
SONITPUR
ASSAM

Advocate for the Petitioner : MR.N ALI, MR.M HUSSAIN,MR.B CHOUDHURY,MS.K L R
YANTHAN,MR.S C BISWAS,MR.P BISWAS,MR. S BISWAS,MR.N H BARBHUIYA,MS.E
SHITIRI

Advocate for the Respondent : PP, ASSAM, MRS.M BORAH,MR.R BORUAH,,,,,,MR.B B BORAH

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

06.11.2024

1. Heard Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State representing the respondent No. 1. None appears for the respondent Nos. 2 and 3.
2. The present application under Section 482 of the Criminal Procedure Code, 1973 assailing an order dated 20.05.2011 passed by the learned Judicial Magistrate 1st Class, Tezpur in Misc. Case No. 143/2008, whereby, the present petitioner was directed to pay maintenance of Rs. 1500/- per month for minor child, which the petitioner claims to be illegitimate. The further challenge is the order dated 15.02.2014 passed by the learned Additional Sessions Judge, Tezpur in Criminal Revision No. 41(S-3)/2011, whereby, the decision of the learned Judicial Magistrate 1st Class, Tezpur dated 20.05.2011 was upheld by dismissing the Criminal Revision preferred by the present petitioner.
3. The basis grievance raised by the petitioner is that the child is an illegitimate child and therefore, the learned Court's below ought not to have granted maintenance in favour of the illegitimate child.
4. It is the case of the petitioner that though he married the respondent wife, however, he did not fathered the child and alleges that his wife was having an illicit relationship with one man and he had fathered the child and therefore, the petitioner is not liable to pay maintenance awarded.
5. I have given anxious consideration to the submissions advanced by the learned

counsel for the parties and also perused the material available on record.

6. The learned Judicial Magistrate 1st Class, Tezpur after considering the material evidence and the pleadings concluded that the father failed to maintain the minor daughter and that the petitioner himself has admitted that he is an employee of Government of Assam and posted as a Senior Assistant in the office of the Deputy Commissioner, Tezpur and his salary is Rs. 10,000/- per month. On the basis of the aforesaid material, the learned Magistrate has concluded that an amount of Rs. 1500/- per month as maintenance shall be a reasonable amount.
7. Such order was assailed in Criminal Revision No. 41(S-3)/2011 before the learned Sessions Judge, Tezpur and the learned Court below under its order dated 15.02.2014 declined to interfere with the decision and concluded that the learned Magistrate has rightly concluded the maintenance awarded after considering the evidence available on record. It is also a conclusion that from the evidence and material, the respondent wife has been able to prove her case sufficiently to the effect that the petitioner had not maintained his daughter.
8. As discernible, the ground of challenge before the Session Judge was to the effect that the daughter should not be allowed to stay with the mother and mother should not allowed to receive maintenance amount on behalf of the minor daughter. The learned revisional Court concluded that such grounds are not sustainable in view of the mandate under Section 125 of Cr.P.C. and accordingly, declined to interfere with the order.
9. It is urged by Mr. Biswas, learned counsel for the petitioner is that the petitioner prayed for a DNA test in another proceeding by refuting the parenthood of the children, however, the learned court below has rejected the same and thereby refused to a fair trial.
10. Thus, a new ground has been taken that the petitioner is not the father of the

child and the DNA test ought to have been allowed. However, in the pleadings, nothing is discernible when such application was filed and what was the order by which such DNA test was rejected.

11. Be that as it may, in a matrimonial dispute, more particularly, in a proceeding under Section 125 Cr.P.C., a Magistrate is not required to declare the parenthood or the legality and validity of any marriage and a prima facie view for the purpose of maintenance is necessary. Such determination whether the petitioner has fathered the girl or that he had legally married his wife or that the his wife is maintaining an illicit relation cannot be gone in depth in a proceeding under Section 125 of Cr.P.C. It is also to be taken note that an order passed in an application under Section 125 Cr.P.C. does not really determine the right and obligations of the parties inasmuch as the Section 125 Cr.P.C. is enacted with a view to provide a summary remedy to neglected wife/children and parents to obtain maintenance. Further, even if it is assumed that the petitioner had applied for DNA test which was rejected, however, such determination is not under challenge before this proceeding inasmuch as such decision was not also earlier challenged when it was passed.
12. The object of revisional power of this Court under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can be exercised where the decision under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in **Chandra Babu vs State** reported in **2015 (8) SCC 774** held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a

perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

13. It is also equally well settled that when two Court's have concurrently concluded certain facts on the basis of the evidence available on record and when such determination is not perverse, this Court in exercise of power under Section 482 of Cr.P.C. should not entertain such a petition.
14. This Court is in agreement with the findings recorded by the court below which are based on sound reasoning. In the considered opinion of this Court and as discussed herein above, the learned Court below has duly appreciated the evidence on record and the conclusion arrived at on the basis of such appreciation of evidence cannot be termed as a decision which could not have been arrived at on the basis of evidence available on record. This Court has not found anything as regards as patent defect of jurisdiction or law. The learned counsel has not also been able to show any non compliance of any provisions of law or that the findings recorded is based on no evidence or that material evidence is ignored or that judicial discretion is exercised arbitrarily or perversely. In the case in hand, after perusal of the material available on record, this Court finds no ground to interfere with the concurrent findings of fact and the determination made by the learned Court below.
15. In view of the aforesaid discussions and reasons, this criminal petition stands dismissed.
16. Interim order, if any, stands vacated. LCR be sent back.

JUDGE

Comparing Assistant